

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

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|--------------------------------|---|---------------------------|
| INTEGRATED BENEFITS, INC. |) | |
| 205 Alameda Drive |) | |
| Jefferson City, MO 65102 |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| VS. |) | CASE NO. 04-4311-CV-C-NKL |
| |) | |
| SOCIAL SECURITY ADMINISTRATION |) | |
| 3523 Amazonas |) | |
| Jefferson City, MO 65109 |) | |
| |) | |
| Respondent. |) | |

PETITION FOR RELIEF

Plaintiff Integrated Benefits Incorporated brings action against the Social Security Administration by and through counsel and alleges as follows:

I. INTRODUCTION

This is an action for relief from an egregious and unreasonable interference with efforts to compile information vital to the adequate representation of claimants for their Title II Disability benefits as specifically provided for in 45 CFR 5b.9. The Respondent, the Social Security Administration, is acting in violation of 45 CFR 5b.9 and the plaintiff, Integrated Benefits, Inc. hereby respectfully requests that this Court enter an order directing that the Respondent cease and desist in its willful impositions of restrictions and limitations upon IBI's access to claimant information in violation of the 45 CFR5b.9. IBI further requests this Court issue an order requiring that the Field SSA Office located in Jefferson City, Missouri comply with 45 CFR 5b.9 and provide IBI with full and unfettered access to information regarding claimants in accordance with 45 CFR 5b.9 and granting Plaintiff such other and further relief as the Court deems just and proper.

II. PARTIES

1. Integrated Benefits Inc., hereinafter referred to as "IBI", is a corporation doing business in the State of Missouri and located at 203 Alameda Drive Jefferson City, Missouri 65102.
2. The Social Security Administration, hereinafter referred to as the "SSA", is a government agency with a principal field office in the State of Missouri located at 3523 Amazonas Jefferson City, Missouri 65109.

III. JURISDICTION & VENUE

3. This Court has “federal question” jurisdiction in this case under 28 U.S.C. § 1331, as IBI has asserted claims arising under the laws of the United States. Specifically, this cause of action involves a federal question under 45 CFR 5b.9.
4. Venue is proper in the Western District of Missouri pursuant to 28 U.S.C. § 1391(b)(1) and (2) and 1391(e), because Defendant SSA is a government agency with a field office in this judicial district in which all events giving rise to this cause of action occurred.
5. Divisional venue is appropriate in the Central Division of the Western District of Missouri pursuant to E.D.Mo. L.R. 3-2.07(B)(2), because Defendant SSA has a field office within the Central Division of the Western District of Missouri and all events giving rise to this cause of action occurred within the Central Division of the Western District of Missouri.

IV. FACTS

6. IBI has been in business since 1985, representing individuals nationwide in their claims for Social Security Disability Benefits. Since that date IBI has repeatedly requested and fought to obtain claimant information from SSA and continues to face opposition on the part of this agency to provide the requested information due to their inconsistent interpretation of their policies and continued adherence to the SSA policy of “non-acquiescence”.
7. Pursuant to the Freedom of Information Act 5 USC § 522 and 20 CFR 401.215, a letter was sent to Diana Tankersley, District Manager of the Jefferson City, Missouri Social Security Office. (See letter dated April 6, 2004, attached hereto and incorporated herein as Exhibit “A”) This letter specifically requested that SSA provide IBI with information for any claimants IBI currently represents in their claims for Title II disability benefits
8. Said request was subsequently forwarded to Ramona Schuenemeyer, Acting Regional Commissioner of the Kansas City Region Office of the Regional Commissioner to respond to our request.
9. On November 18, 2004 a letter was received by IBI that denied releasing the requested information from the Jefferson City field office to IBI. (See letter dated November 18, 2004, attached hereto and incorporated herein as Exhibit “B”) IBI was informed that this request would be honored only should the claimant reside within the Jefferson City servicing area.
10. IBI was told in the above letter that any other specific requests must be made to each of the more than 1300 SSA Field Offices. Specifically, that we must request information from the field office that services the particular claimant address and that any request for information that did not comply with this format would be disregarded.
11. IBI has since learned that the SSA has allowed a number of our competitors to request the very same printout information directly from their nearest Field Branch Office and to obtain the information at their leisure simply by submitting

the requisite consent forms, which we also employ.

VII. COUNT I

I. THE SOCIAL SECURITY ADMINISTRATION IS ACTING IN VIOLATION OF 45 CFR 5b.9 BY ITS WILLFUL, CONTINUOUS AND EGREGIOUS INTERFERENCE WITH A REPRESENTATIVE'S RIGHT TO OBTAIN THE CLAIMANT'S INFORMATION FOR THE PURPOSE OF PURSUING A CLAIM FOR DISABILITY BENEFITS.

12. IBI re-alleges paragraphs 1 through 11 as if fully set forth herein
13. The SSA has continuously prevented and restricted IBI's access to information vital to the effective representation of claimants for Title II Social Security Disability Benefits.
14. The SSA has set forth an inconsistent standard of practice by allowing our competitors to obtain information in a manner that expedites their request while unreasonably limiting IBI's access to formally requested information from the large number of Field Offices located throughout the United States.
15. The SSA's application of Programs Operation Manual System § GN00904.048 is unreasonable in that it is not reasonable to force an organization representing claimants on a national level to make repeatedly ignored requests to each and every office that is in the particular claimant's servicing area.

VIII. ARGUMENT

The SSA recognizes a claimant's right to appoint a representative pursuant to 20 CFR 416.1507. This section requires that the claimant sign a written notice stating that they wish to appoint a certain person or persons as their representative and that certain person or persons also signs the notice, thereby agreeing to be the claimant's representative. (*See* CFR 461.1507 (a) and (b)). In fact, not only has the SSA recognized the claimant's right to have a representative, but they have long recognized the benefits to claimants of having representation. Any claimant who finds themselves going as far as the hearing level with the possibility of a lengthily appeals process is informed that their claim would fare better, and they would receive a more favorable outcome, were they to appoint a representative to assist them in pursuing their claim. Furthermore, those individuals who wish not to seek representation are required to make a knowing and voluntary waiver of such representation on the record before the matter may proceed. Thus, it is evident that the Social Security Administration in some manner appreciates the value of representatives such as IBI and what we attempt to accomplish for all parties involved in the Disability Benefits Claims system. It is, therefore, extremely frustrating and perplexing to continuously meet with resistance and an unyielding, almost adversarial attitude when we, as representatives, attempt to exercise our rights and duties under the law and obtain information that is vital to the representation of claimants.

Section GN03305.001 of the SSA's own Programs Operation Manual System states in relevant part that the "SSA's disclosure policy is to generally disclose all records with the consent of the individual." *See also* 45 CFR 5b.9. Form SSA-1696 complies with the Criteria for Consent as outlined in § GN03305.001.2 of the Programs Operation Manual System. The form, when presented to SSA, is signed and dated by the claimant, it identifies the individuals who are appointed as representatives, and it specifically states that the claimant is giving their consent that those individuals "may, *entirely in my place*, make any request or give any notice; give or

draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).”(emphasis added). In her response to IBI’s request, the Acting Regional Commissioner, Ramona Schuenemeyer, suggests that “[o]nce a claim has been processed, a valid consent form is required for a third-party to obtain information about an individual. She suggests that IBI consider using form SSA-3288, the SSA Consent for Release of Information. By way of direction, Ms. Schuenemeyer states that form SSA-3288 is applicable “once a claim has been processed.” (See Exhibit “B”). As stated above, form SSA-1696 meets the Criteria for Consent and both explicitly and implicitly allows the representative the same rights to the claimant’s information as the claimant has themselves. (See 20. CFR 416.1510). Therefore, this one form is more than sufficient to allow the representative to gain access to information as needed at all stages of a claim and until all issues regarding that claim have been resolved. (i.e. auxiliary payments have been made, offsets computed and verified, and verification that the correct amount is being paid to the claimant has been made). The suggestion that a form SSA-1696 expires at some arbitrary time in the claims process and that the claimant’s consent and representative’s rights expire along with it is patently bureaucratic waste. To limit the scope and duration of the SSA-1696 appointment and consent form to something less than the natural duration and course of the claimant’s action is to create further hindrances upon the administration and processing of disability claims. The executed SSA-1696 should remain in full force and effect, allowing the representative full and unfettered access to the claimant’s information to the same extent that the claimant is able to do during the entire time that there remain issues to be resolved regarding that claim and no other, further or additional consent form should be required.

As noted above, pursuant to 20 CFR 416.1510, a representative may “(1) obtain information about your claim to the same extent that you are able to do; (2) Submit evidence; (3) Make statements about facts and law; and (4) Make any request or give any notice about the proceedings before us.” Based on this authority, it is abundantly clear that a claimant’s representative is entitled to have equal and unfettered access to the claimant’s records and information to the same extent as the claimant has. However, this has not proven to be the practice in all SSA offices throughout the country. (See Memo attached hereto and incorporated herein as Exhibit “C”). In that memo, the writer articulates a less than cooperative and almost adversarial stance toward the representative. She advises that when a representative comes into the field office to review the file to determine what documents need to be copied, the employees at that office should offer to copy only those specific documents that the representative requests and not the entire file. However, if the representative does not appear at the field office but rather makes the request without reviewing the file in person, “provide a copy [of the file]. This includes any query printouts currently in the file” (See Memo Exhibit “C”). This position is not only obstructionist in nature; it is illogical as well in that it actually complicates the claims process. To deny unfettered access to all information contained in a claimant’s file clearly goes against the intent of the law and infringes on the rights of the claimant and their representative.

In its denial of IBI’s request to allow it to submit information requests to the closest local field office, the SSA has also taken the position that “Only the appointed authorized representative may make a request for information or review the claimant’s file.” (See Memo, attached hereto and incorporated herein as Exhibit “C”). However, this contradicts §GN03910.025.3 of the SSA’s own Programs Operation Manual System which states in relevant part as follows:

“...[T]he appointed representative is not required to perform every task related to the representation personally. Appointed representatives often delegate such tasks as developing the claimant’s medical record or preparing written materials regarding an appeal to an assistant. An unappointed assistant who is supervised

and directed by the appointed representative may perform tasks of this nature, as long as the appointed representative personally makes the decisions central to presenting the claimant's case before the SSA"

GN03910.025.3

If a representative will receive the entire file if they request it without first going To the field office to review the documents in that file (*See* Memo, attached hereto and incorporated herein as Exhibit "C"), then it is logical, in light of the authority cited *supra*, that the representative could also send an unappointed assistant to the field office to pick up the file for them. The assertion that IBI cannot send a secretary or paralegal to the local field office to pick up information queries and file copies defies logic and is indicative of the uncooperative and unyielding position that the SSA has consistently taken with regard to IBI's requests. This is a perfect example of the application of the SSA's "non-acquiescence" policy.

Contrary to the SSA's assertion, IBI's request for information from a central source would not "jeopardize the service [that the field office] provides to the members of the public who live in the counties they serve." (*See* Exhibit "B"). IBI would not, for example, submit a long list of queries or requests for information on the first day of the month, when the field office is generally the busiest. IBI would submit our information requests in a respectful and efficient manner so as not to tax the resources of the local field office.

In her response to IBI's request, the Acting Regional Commissioner, Ramona Schuenemeyer, also makes the erroneous assertion that these requests for information would be "a blanket request for information from [the SSA's] records or any other records consisting of a variety of data elements." (*See* Exhibit "B"). These requests are not blanket requests but rather they are requests regarding specifically identified information requested about individually identified claimants. Furthermore, the compilation of a "variety of data elements" in a file is essential to the effective, thorough and zealous representation of claimants before the SSA.

The policy of requiring that IBI deal with more than 1300 disparate offices is in effect a denial of IBI's right to access to that information to which it is entitled. Had these 1300 offices provided IBI with the information sought, we would not have requested it from the local field office and we would not be in the position of having to file this Petition for Relief. The fact is, IBI's requests are not honored and we are then forced to climb the administrative ladder of follow-ups, delays and expense to finally receive the information we are entitled to under the law. To say that it is more "convenient" for us to deal with one local office is true, to imply that it is less "convenient" for SSA to process our information requests in this manner is false. The necessity of our numerous and repeated follow-ups to Supervisors, Managers, Area Directors Offices and Regional Commissioners, does not result in an efficient operation for SSA. What SSA has accomplished with this policy is to make it more difficult for all parties to comply with what is simply and most expediently done through the local field office.

Pursuant to 20 CFR 416.1540 (b)(1), the representative of a claimant has an affirmative duty to "[a]ct with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim, and forward the same to us for consideration as soon as practicable." Allowing IBI to submit its information requests to the nearest SSA local field office and to allow IBI to receive a copy of all information the SSA possess regarding the claimant would aid the representatives at IBI in fulfilling that duty. It would allow the representative to be more thoroughly prepared to present the claimant's case to the SSA and it would also improve efficiency by eliminating the possibility of duplicate submissions to the file by the representative on behalf of the claimant.

In closing, it is common sense to allow IBI to retrieve its information requests regarding claimants at the local SSA field office located in Jefferson City, Missouri because it would save time, expense and effort on the part of IBI, the claimant and the SSA. Under the present system, IBI repeatedly wastes time and effort trying to contact the field office in the claimant's home state and very frequently numerous requests must be submitted before the information will be provided. This inefficient use of time and energy is needless because the SSA has a well established nationwide data base and it is only logical that this technology be applied in an efficient and effective manner. IBI simply wishes to expedite and streamline the claims process by submitting our queries and information requests to the closest Field Office which is located in Jefferson City, Missouri.

WHEREFORE, based on the law and authorities cited *supra* and for all of the reasons stated above, the plaintiff, Integrated Benefits, Inc. hereby respectfully requests that this Court enter an order directing that the Respondent cease and desist in its willful impositions of restrictions and limitations upon IBI's access to claimant information in violation of the 45 CFR 5b.9. IBI further requests this Court issue and order requiring that the Field SSA Office located in Jefferson City, Missouri comply with 45 CFR 5b.9 and provide IBI with full and unfettered access to information regarding claimants in accordance with 45 CFR 5b.9 and granting Plaintiff such other and further relief as the Court deems just and proper

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on all parties listed below by certified US Mail, postage prepaid, return receipt requested, to their addresses of record indicated below, all on this 16th day of December, 2004.

Commissioner Jo Anne B. Barnhardt
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